

Appl. No. 09/812,376
Atty. Docket No. 8480
Amdt. dated November 23, 2004
Reply to Office Action of August 25, 2004
Customer No. 27752

REMARKS

Claims 1 - 20 are pending in the present application. No additional claims fee is believed to be due.

Rejection Under 35 USC 112, First Paragraph

The Office Action states Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Office Action asserts the claims are replete with numerous instances of claim language whose meaning is uncertain, in terms of how the structure of the invention is defined. Examples of such language include "interior designs reflecting characteristics" (claim 1), "fulfilling the needs of the particular type of consumer" (claim 1), "multipurpose customer interaction center" (claims 1, 11 and 17), "interior designs reflecting characteristics of a particular type of consumer" (claim 1), "area where customers can socialize" (claims 2, 13 and 18), "activity area for children" (claim 2), "public speaking accommodations" (claims 2 and 18), "educational materials" (claims 3, 5 and 19), "scheduling features" (claims 3 and 19), "informative marketing materials" (claims 4 and 18), "topics of interest" (claim 4), "highlight center" (claim 5), "seasonal and promotional products" (claim 5), "attuned with the particular type of consumer's diet" (claim 6), and "interior designs suitable for" (claim 11).

These rejections are respectfully traversed. First, claims 1, 5-11 and 17 were previously amended per the response to the first office action to more distinctly claim each of the centers of the specialized merchandising system as being within the partitioned section. The Office Action merely states a conclusion of indefiniteness without any analysis or support for this conclusion. The central test under the definiteness requirement is that the claims set out with a reasonable degree of clarity and particularity the claimed subject matter. An indefiniteness rejection requires the examiner to take into account the content of the particular application disclosure, the teachings of the prior art, and the claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art. MPEP 2173.02. In the instant case, there is no showing that one of skill in the art would not understand the claim terms at issue when interpreted in light of the specification.

Second, as explained in the previous office action response, per MPEP 1504.04 "[T]he definiteness of claim language employed must be analyzed – not in a vacuum, but always in light of the teachings of the prior art and of the particular application disclosure as it would be

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interpreted by one possessing the ordinary level of skill in the pertinent art." *In re Moore*, 439 F.2d 1232, 1235, 169 USPQ 236, 238 (CCPA 1971).

Each of the claim terms identified in the office action as having uncertain meanings are adequately defined and explained in the specification as it would be interpreted by one possessing the ordinary level of skill in the pertinent art. For instance, Page 5, lines 10-15, of the specification describes an example of a particular type of consumer in that "one embodiment of the specialized merchandizing system may target newborn infants, toddlers and children under the age of five".

In addition, "the multipurpose consumer interaction center" is defined on page 3, lines 24-30, as

"an area within the merchandising system providing access to information and services accommodating the intended consumer."

Further, page 4, lines 13-19, suggest the location for the "multipurpose customer interaction center" and other centers forming the specialized merchandising system.

"The partitioned section can be divided into centers offering specific products and services for the intended consumer. For instance, the multipurpose customer interaction center 20, described above, may be located near the middle of the partitioned area surrounded by a nutrition center 40 displaying nutritional food products, an equipment center 50 displaying furnishings, a personal hygiene center 60 displaying personal care products, a clothing center offering the latest fashions, and/or a highlight center 70 displaying seasonal and promotional products."

The other items pointed out in the office action as having uncertain meanings such as "area where customers can socialize"; "activity area for children"; "public speaking accommodations"; "educational materials"; "scheduling features"; "informative marketing materials"; speak for themselves in that their ordinary meanings would be easily recognized by one of ordinary skill in the art. These terms are described in one embodiment on page 5 lines 16-24.

Terms such "highlight center"; "seasonal and promotional products"; "attuned with the particular type of consumer's diet"; and "interior designs suitable for" - are also described in the specification as they would be interpreted by one possessing the ordinary level of skill in the pertinent art. For instance Page 6, lines 7-18 of the specification provides, "highlight center" displays promotional items, seasonal products and/or new products."

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Consequently, for the foregoing reasons, Attorney for the Applicant submits that claims 1-20 of the applicant's invention comply with the requirements of 35 U.S.C. 112, second paragraph. Therefore, the rejection should be withdrawn.

Examiner also asserts that Claim 10 contains several examples of language which lacks antecedent basis, including "nutrition center", "equipment center" and "the personal hygiene center". Examiner is referred to the Amendment and Response to the previous office action where claim 10 was amended to correct the lack of antecedent basis for the aforementioned terms.

Rejection Under 35 USC 103(a) Over Barnes and Noble in view of Perkowski

Claims 1-15 and 17-20 have been rejected under 35 USC 103(a) as being unpatentable over Barnes and Noble in view of Perkowski. Applicants respectfully traverse this rejection.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine the reference teachings. See *In re Frueh*, 972 F.2d 1260 (Fed. Cir. 1992); MPEP § 2143.01. Second, there must be a reasonable expectation of success. *In re Vaack*, 947 F.2d 488 (Fed. Cir. 1991); MPEP § 2143.02. Third, the prior art reference or combined references must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981 (CCPA 1974); MPEP § 2143.03. Furthermore, in establishing a *prima facie* case of obviousness, case law clearly places the "burden of proof on the Patent Office which requires it to produce the factual basis for its rejection of an application under sections 102 and 103." *In re Warner*, 379 F.2d 1011, 1016 (CCPA 1967).

Barnes & Noble is an independent bookstore which typically resides on its own as independent building or as leased space in a mall. Barnes & Noble is not a specialized merchandising system comprising a partitioned section within a retail establishment such as a grocery store, department store, supermarket, superstore, or wholesale club. In addition, the Examiner has provided no indication that current Barnes & Noble bookstores suggest or provide the motivation to set up one of their bookstores as partitioned section within a retail establishment such as a grocery store, department store, supermarket, superstore, or wholesale club.

Examiner admits that Barnes & Noble fails to disclose a customer interaction center and then states that such centers are known in retail establishments without further explanation. Examiner then proceeds in explaining that Perkowski discloses in the Figures and in the specification one example of a multipurpose customer interaction center. However, Examiner

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does not indicate which figure or part of the specification of Perkowski providing such disclosure. Review of Perkowski reveals no such disclosure. In addition, Examiner has provided no explanation as to how Barnes & Noble bookstores provide the necessary motivation to combine Perkowski with such retail establishments. Perkowski is directed to a system and method for collecting consumer related information and transmitting and delivering the same along the consumer product supply and demand chain. Examiner has provided no explanation as to why one skilled in the art would be motivated to combine Barnes & Noble bookstores with Perkowski.

With regards to claims 2, 13 and 18, Examiner asserts that an area for socialization, an activity area and public speaking accommodations, are extremely broad and that any area is capable of being used by people for socializing, speaking or activity. However, Examiner provides no indication that Barnes and Noble provides such a customer interaction area and offers no explanation as to why one skilled in the art would be motivated to modify Barnes & Noble to provide such a customer interaction area.

With regards to Claims 3, 14 and 19, Examiner asserts that Perkowski discloses internet access but provides no explanation as to why one skilled in the art would be motivated to combine Perkowski with Barnes & Noble. Even if the necessary motivation were present, Perkowski does not disclose and therefore, the combination does not teach or suggest computer terminals providing internet access for online shopping, access to educational materials and scheduling features for planning activities.

With respect to claims 6-9, 11, 15, 17 and 20 Examiner asserts the particular type of consumer goods claimed are obvious variations on the known sections of Barnes and Noble without providing further explanation as to why they are obvious variations. Examiner states that in the case of claim 11, retail children's stores, such as Buy Buy Baby, contains different sections for different types of consumer goods. It is not clear what relation exists between Barnes and Noble and Buy Buy Baby or for that matter, what relation Buy Buy Baby has to a specialized merchandizing system within a retail establishment.

Examiner rejected Claim 16 under 35 U.S.C. 103(a) as being unpatentable over Barnes & Noble in view of Perkowski, and further in view of Fulle. According to Examiner Barnes & Noble in view of Perkowski discloses all of the limitations of the claim with the exception of merchandizing fixtures on casters. First, it is not clear how Barnes & Noble in combination with Perkowski disclose all of the elements claimed. Barnes & Noble is a bookstore and Perkowski is directed to a system and method for collecting consumer related information and transmitting and delivering the same along the consumer product supply and demand chain. The combination does

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not teach or suggest a specialized merchandising system for a retail establishment providing a variety of child care products for newborn infants, toddlers and children under the age of five and comprising a partitioned section within the retail establishment constructed with interior designs and colors suitable for newborn infants, toddlers or children under the age of five. Second, although Fulle may disclose a merchandising fixture having casters thereon, Examiner has not provided any explanation as to why Barnes & Noble would be interested in such a fixture, and thus provide the necessary motivation to suggest combining Barnes & Noble bookstores with Fulle.

Conclusion

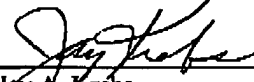
In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 U.S.C 112 and 35 U.S.C 103(a). Early and favorable action in the case is respectfully requested.

Applicants have made an earnest effort to place their application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, Applicants respectfully request reconsideration of this application and allowance of Claims 1-20.

Respectfully submitted,

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